

SB2358



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2358

Introduced 2/15/2013, by Sen. Heather A. Steans

SYNOPSIS AS INTRODUCED:

New Act

Creates the Benefit Limited Liability Company Act. Provides that a limited liability company may become a benefit limited liability company for public benefit and other purposes. Defines key terms and contains accountability and transparency provisions.

LRB098 06644 JLS 36688 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Article 1.

5 General Provisions

6 Section 1-1. Short title. This Act may be cited as the
7 Benefit Limited Liability Company Act.

8 Section 1-5. Application and effect of the Act.

9 (a) This Act applies to all benefit liability companies.

10 (b) The existence of a provision of this Act shall not of
11 itself create an implication that a contrary or different rule
12 of law is applicable to a limited liability company that is not
13 a benefit limited liability company. This Act shall not affect
14 a statute or rule of law that is applicable to a limited
15 liability company that is not a benefit limited liability
16 company.

17 (c) The Limited Liability Company Act applies to benefit
18 limited liability companies, including their organization, and
19 they shall enjoy the powers and privileges and be subject to
20 the duties, restrictions, and liabilities of other limited
21 liability companies, except so far as provided by this Act. If
22 any provision of this Act conflicts with the Limited Liability

1 Company Act, this Act takes precedence.

2 (d) A provision of the articles of organization or
3 operating agreement of a benefit limited liability company may
4 not relax, be inconsistent with, or supersede a provision of
5 this Act.

6 Section 1-10. Definitions. As used in this Act, unless the
7 context otherwise requires, the words and phrases defined in
8 this Section shall have the meanings set forth herein.

9 "Benefit limited liability company" means a limited
10 liability company organized under the Limited Liability
11 Company Act:

12 (1) that has elected to become subject to this Act; and

13 (2) whose status as a benefit limited liability company
14 has not been terminated under Section 2-10.

15 "Benefit enforcement proceeding" means a claim or action
16 for:

17 (1) the failure of a benefit limited liability company
18 to pursue or create general public benefit or a specific
19 public benefit set forth in its articles of organization;
20 or

21 (2) a violation of an obligation, duty, or standard of
22 conduct under this Act.

23 "General public benefit" means a material positive impact
24 on society and the environment, taken as a whole, assessed
25 against a third-party standard, from the business and

1 operations of a benefit limited liability company.

2 "Minimum status vote" means that, in addition to any (i)
3 other approval, vote, or consent required by the statutory law
4 that principally governs the internal affairs of the limited
5 liability company, (ii) provision of the publicly filed record
6 or document required to form the limited liability company, or
7 (iii) agreement binding on some or all of the holders of equity
8 interests in the limited liability company, the holders of
9 every class or series of equity interest in the limited
10 liability company that are entitled to receive a distribution
11 of any kind from the limited liability company shall be
12 entitled to vote on or consent to the action regardless of any
13 otherwise applicable limitation on the voting or consent rights
14 of any class or series and the action must be approved by a
15 vote or consent of at least two-thirds of those holders.

16 "Specific public benefit" means:

17 (1) providing low-income or underserved individuals or
18 communities with beneficial products or services;

19 (2) promoting economic opportunity for individuals or
20 communities beyond the creation of jobs in the ordinary
21 course of business;

22 (3) preserving the environment;

23 (4) improving human health;

24 (5) promoting the arts, sciences, or advancement of
25 knowledge;

26 (6) increasing the flow of capital to entities with a

1 public benefit purpose; or

2 (7) the accomplishment of any other particular benefit
3 for society or the environment.

4 "Subsidiary" of a person means an entity in which the
5 person owns beneficially or of record 50% or more of the
6 outstanding equity interests. For the purposes of this
7 definition, a percentage of ownership in an entity shall be
8 calculated as if all outstanding rights to acquire equity
9 interests in the entity have been exercised.

10 "Third-party standard" means a standard for defining,
11 reporting, and assessing overall corporate, social, and
12 environmental performance that:

13 (1) is a comprehensive assessment of the impact of the
14 business and the business' operations upon the
15 considerations listed in subdivisions (a)(1)(B) through
16 (a)(1)(E) of Section 4-1;

17 (2) is developed by an entity that has no material
18 financial relationship with the benefit corporation or any
19 of its subsidiaries;

20 (3) is developed by an entity that is not materially
21 financed by any of the following organizations and not more
22 than one-third of the members of the governing body of the
23 entity are representatives of:

24 (A) associations of businesses operating in a
25 specific industry, the performance of whose members is
26 measured by the standard;

1 (B) businesses from a specific industry or an
2 association of businesses in that industry; or

3 (C) businesses whose performance is assessed
4 against the standard;

5 (4) is developed by an entity that:

6 (A) accesses necessary and appropriate expertise
7 to assess overall corporate social and environmental
8 performance; and

9 (B) uses a balanced multi-stakeholder approach,
10 including a public comment period of at least 30 days
11 to develop the standard; and

12 (5) makes the following information regarding the
13 standard publicly available:

14 (A) the factors considered when measuring the
15 overall social and environmental performance of a
16 business and the relative weight, if any, given to each
17 of those factors;

18 (B) the identity of the directors, officers, any
19 material owners, and the governing body of the entity
20 that developed, and controls revisions to, the
21 standard, and the process by which revisions to the
22 standard and changes to the membership of the governing
23 body are made; and

24 (C) an accounting of the sources of financial
25 support for the entity, with sufficient detail to
26 disclose any relationships that could reasonably be

1 the limited liability company is a benefit limited liability
2 company. In order to be effective, the amendment must be
3 adopted by at least the minimum status vote.

4 (b) For any entity that is a party to a merger or
5 consolidation or is the exchanging entity in a share exchange,
6 where the surviving, new, or resulting entity in the merger,
7 consolidation, or share exchange is intended to be a benefit
8 limited liability company, the plan of merger, consolidation,
9 or share exchange must be adopted by at least the minimum
10 status vote in order to be effective.

11 Section 2-10. Termination of status.

12 (a) A benefit limited liability company may terminate its
13 status as such and cease to be subject to this Act by amending
14 its articles of organization to remove the statement that the
15 limited liability company is a benefit limited liability
16 company. In order to be effective, the amendment must be
17 adopted by at least the minimum status vote.

18 (b) If a plan of merger, conversion, or share exchange
19 would have the effect of terminating the status of a limited
20 liability company as a benefit limited liability company, in
21 order to be effective, the plan must be adopted by at least the
22 minimum status vote.

23 (c) A sale, lease, exchange, or other disposition of all or
24 substantially all of the assets of a benefit limited liability
25 company, unless the transaction is in the usual and ordinary

1 course of business, shall not be effective unless the
2 transaction is adopted by at least the minimum status vote.

3 Article 3.

4 Benefit Limited Liability Company Purposes

5 Section 3-1. Benefit limited liability company purposes.

6 (a) A benefit limited liability company shall have a
7 purpose of creating general public benefit. This purpose is in
8 addition to its purposes under Section 1-25 of the Limited
9 Liability Company Act and any specific purpose set forth in its
10 articles of organization in accordance with subsection (b).

11 (b) The articles of organization of a benefit limited
12 liability company may identify one or more specific public
13 benefits the creation of which is a purpose of the benefit
14 corporation in addition to its purposes under Section 1-25 of
15 the limited Liability Company and subsection (a). The
16 identification of a specific public benefit under this
17 subsection does not limit the obligation of a benefit limited
18 liability company under subsection (a).

19 (c) The creation of general public benefit and specific
20 public benefit under subsections (a) and (b) is in the best
21 interests of the benefit limited liability company.

22 (d) A benefit limited liability company may amend its
23 articles of organization to add, change, or remove a specific
24 public benefit. In order to be effective, the amendment must be

1 adopted by at least the minimum status vote.

2 Article 4.

3 Accountability

4 Section 4-1. Standard of conduct for members and managers.

5 (a) Without regard to whether the benefit limited liability
6 company is subject to Section 15-15 of the Limited Liability
7 Company Act, in discharging the duties of their respective
8 positions, the members and managers of a benefit limited
9 liability company in considering the best interests of the
10 benefit limited liability company:

11 (1) shall consider the effects of any action upon:

12 (A) the members of the benefit limited liability
13 company;

14 (B) the employees and work force of the benefit
15 limited liability company, its subsidiaries, and its
16 suppliers;

17 (C) the interests of customers as beneficiaries of
18 the general public benefit or specific public benefit
19 purposes of the benefit limited liability company;

20 (D) community and societal considerations,
21 including those of each community in which offices or
22 facilities of the benefit limited liability company,
23 its subsidiaries or its suppliers are located;

24 (E) the local and global environment;

1 (F) the short-term and long-term interests of the
2 benefit limited liability company, including benefits
3 that may accrue to the benefit limited liability
4 company from its long-term plans and the possibility
5 that these interests may be best served by the
6 continued independence of the benefit limited
7 liability company; and

8 (G) the ability of the benefit limited liability
9 company to accomplish its general public benefit
10 purpose and any specific public benefit purpose; and

11 (2) may consider:

12 (A) considerations listed in Section 15-5 of the
13 Limited Liability Company Act; and

14 (B) any other pertinent factors or the interests of
15 any other group that they deem appropriate; but

16 (3) need not give priority to the interests of a
17 particular person or group referred to in paragraphs (1) or
18 (2) over the interests of another person or group unless
19 the benefit limited liability company has stated in its
20 articles of organization its intention to give priority to
21 certain interests related to its accomplishment of its
22 general public benefit purpose or a specific public benefit
23 purpose identified in its articles of organization.

24 (b) The consideration of interests and factors in the
25 manner required by subsection (a) is in addition to the ability
26 of members and managers to consider interests and factors as

1 provided in Section 15-15 of the Limited Liability Company Act.

2 (c) A member or manager is not personally liable for
3 monetary damages for:

4 (1) any action taken as a member or manager if the
5 member or manager performed the duties of office in
6 compliance with Article 15 of the Limited Liability Company
7 Act and this Section; or

8 (2) a failure of the benefit limited liability company
9 to pursue or create general public benefit or a specific
10 public benefit.

11 (d) A member or manager does not have a duty to a person
12 that is a beneficiary of the general public benefit purpose or
13 a specific public benefit purpose of a benefit limited
14 liability company arising from the status of the person as a
15 beneficiary.

16 Section 4-5. Right of action; benefit enforcement
17 proceeding.

18 (a) No person may bring an action or assert a claim against
19 a benefit limited liability company or its members or managers
20 with respect to failure to pursue or create general public
21 benefit or a specific public benefit set forth in its articles
22 of organization or violation of a duty or standard of conduct
23 under this Act except in a benefit enforcement proceeding.

24 (b) A benefit enforcement proceeding may be commenced or
25 maintained only:

1 (1) directly by the benefit limited liability company;

2 or

3 (2) derivatively by:

4 (A) a member;

5 (B) a manager;

6 (C) a person or group of persons that owns
7 beneficially or of record 5% or more of the equity
8 interests in an entity of which the benefit limited
9 liability company is a subsidiary; or

10 (D) other persons as specified in the articles of
11 organization or management agreement of the benefit
12 limited liability company.

13 (c) A benefit limited liability company shall not be liable
14 for monetary damages under this Act for any failure of the
15 benefit limited liability company to pursue or create general
16 public benefit or a specific public benefit.

17 Article 5.

18 Transparency

19 Section 5-1. Annual benefit report.

20 (a) A benefit limited liability company shall prepare an
21 annual benefit report including all of the following:

22 (1) A narrative description of:

23 (A) the process and rationale for selecting the
24 third party standard used to prepare the benefit

1 report;

2 (B) the ways in which the benefit limited liability
3 company pursued general public benefit during the year
4 and the extent to which general public benefit was
5 created;

6 (C) the ways in which the benefit limited liability
7 company pursued a specific public benefit that the
8 articles of organization state it is the purpose of the
9 benefit limited liability company to create and the
10 extent to which that specific public benefit was
11 created; and

12 (D) any circumstances that have hindered the
13 pursuit by the benefit limited liability company of its
14 general public benefit purpose and any specific public
15 benefit purpose or the creation by the benefit limited
16 liability company of general public benefit and any
17 specific public benefit.

18 (2) An assessment of the overall social and
19 environmental performance of the benefit limited liability
20 company against a third-party standard:

21 (A) applied consistently with any application of
22 that standard in prior benefit reports; or

23 (B) accompanied by an explanation of the reasons
24 for any inconsistent application.

25 (3) The compensation paid by the benefit limited
26 liability company during the year to each manager in the

1 capacity of a manager.

2 (4) The name of each person that owns 5% or more of the
3 outstanding shares of the benefit limited liability
4 company either:

5 (A) beneficially, to the extent known to the
6 benefit limited liability company without independent
7 investigation; or

8 (B) of record.

9 (5) A statement of any connection between the
10 organization that established the third-party standard, or
11 its directors, officers, or material owners, and the
12 benefit limited liability company or its members or
13 managers, including any financial or governance
14 relationship that might materially affect the credibility
15 of the use of the third-party standard.

16 (b) The benefit limited liability company shall send a
17 benefit report annually to each member:

18 (1) within 120 days following the end of the fiscal
19 year of the benefit limited liability company; or

20 (2) at the same time that the benefit limited liability
21 company delivers any other annual report to its members.

22 (c) A benefit limited liability company shall post all of
23 its benefit reports on the public portion of its Internet
24 website, if any, but the compensation paid to managers and
25 financial or proprietary information included in the benefit
26 reports may be omitted from the benefit reports as posted.

1 (d) If a benefit limited liability company does not have an
2 Internet website, the benefit limited liability company shall
3 provide a copy of its most recent benefit report, without
4 charge, to any person that requests a copy.